



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,082	10/17/2001	Christopher Piche	260331.00004	3163

66953 7590 01/23/2008
FASKEN MARTINEAU DUMOULIN, LLP
2100 - 1075 WEST GEORGIA STREET
VANCOUVER, BC V6E-3G2
CANADA

EXAMINER

BATURAY, ALICIA

ART UNIT	PAPER NUMBER
----------	--------------

2155

MAIL DATE	DELIVERY MODE
-----------	---------------

01/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/978,082

Applicant(s)

PICHE ET AL.

Examiner

Alicia Baturay

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to the amendment filed 5 November 2007.
2. Claims 5-8 were added.
3. Claims 1-8 are pending in this Office Action.

Response to Amendment

4. Applicant's amendments and arguments with respect to claims 1-4 and new claims 5-8 filed on 5 November 2007 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMoney (U.S. 6,721,789) in view of Jain (U.S. 6,259,677) and further in view of Goldberg et al. (U.S. 5,692,213).

DeMoney teaches the invention substantially as claimed including a system for managing storage accesses for multimedia streams including a disk scheduler that may have a

guaranteed rate queue for queuing storage requests in which requests are ordered according to a deadline (see Abstract).

7. With respect to claim 1, DeMoney teaches a method for improving the processing of a plurality of queued animation over a computer network having a client and a server, comprising: forming a queue of server messages at the client (DeMoney, col. 10, lines 31-34); adding messages received from the server queue (DeMoney, col. 11, lines 30-32); calculating a minimum deadline of the deadlines of each of the messages in the queue (DeMoney, col. 11, lines 51-58); calculating the time required to play all the currently queued animations (DeMoney, col. 11, lines 63-65).

DeMoney does not explicitly teach the deadline determined by the message.

However, Jain teaches setting a deadline for each message in the queue, the deadline determined by the message (Jain, col. 5, lines 40-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeMoney in view of Jain in order to enable determining the deadline by the message. One would be motivated to do so in order to enable an adaptive method that attempts to minimize delay for current network conditions.

The combination of DeMoney and Jain does not explicitly teach accelerating the multimedia stream.

However, Goldberg teaches if the time required to play all the currently queued animations is greater than the minimum deadline of the server messages in the queue, accelerating the animation (Goldberg, col. 6, lines 34-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of DeMoney and Jain in view of Goldberg in order to enable accelerating the multimedia stream. One would be motivated to do so in order to allow a user to “catch up” to the current portion in the presentation before a network lag.

8. With respect to claim 2, DeMoney teaches a method for improving the processing of a plurality of queued animation over a computer network between first and second clients, comprising:

Forming a queue of messages from the first client at the second client (DeMoney, col. 10, lines 31-34); adding messages received from the first client to the queue at the second client (DeMoney, col. 11, lines 30-32); calculating a minimum deadline of the deadlines of each of the messages in the queue (DeMoney, col. 11, lines 51-58); calculating the time required to play all the currently queued animations (DeMoney, col. 11, lines 63-65).

DeMoney does not explicitly teach the deadline determined by the message.

However, Jain teaches setting a deadline for each message in the queue, the deadline determined by the message (Jain, col. 5, lines 40-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeMoney in view of Jain in order to enable determining the deadline by the message. One would be motivated to do so in order to enable an adaptive method that attempts to minimize delay for current network conditions.

The combination of DeMoney and Jain does not explicitly teach accelerating the multimedia stream.

However, Goldberg teaches if the time required to play all the currently queued animations is greater than the minimum deadline of the server messages in the queue, accelerating the animation (Goldberg, col. 6, lines 34-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of DeMoney and Jain in view of Goldberg in order to enable accelerating the multimedia stream. One would be motivated to do so in order to allow a user to "catch up" to the current portion in the presentation before a network lag.

9. Claims 3 and 4 do not teach or define any new limitations above claims 1 and 2 and therefore are rejected for similar reasons.
10. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMoney and in view of Jain in view of Goldberg and further in view of Goldhor et al. (U.S. 6,625,656).
11. With respect to claim 5, DeMoney teaches the invention described in claim 1, including a method for improving the processing of a plurality of queued animation over a computer network having a client and a server, comprising: forming a queue of server messages at the client (DeMoney, col. 10, lines 31-34); adding messages received from the server queue (DeMoney, col. 11, lines 30-32); calculating a minimum deadline of the deadlines of each of the messages in the queue (DeMoney, col. 11, lines 51-58); calculating the time required to play all the currently queued animations (DeMoney, col. 11, lines 63-65).

DeMoney does not explicitly teach the deadline determined by the message.

However, Jain teaches setting a deadline for each message in the queue, the deadline determined by the message (Jain, col. 5, lines 40-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeMoney in view of Jain in order to enable determining the deadline by the message. One would be motivated to do so in order to enable an adaptive method that attempts to minimize delay for current network conditions.

The combination of DeMoney and Jain does not explicitly teach accelerating the multimedia stream.

However, Goldberg teaches if the time required to play all the currently queued animations is greater than the minimum deadline of the server messages in the queue, accelerating the animation (Goldberg, col. 6, lines 34-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of DeMoney and Jain in view of Goldberg in order to enable accelerating the multimedia stream. One would be motivated to do so in order to allow a user to “catch up” to the current portion in the presentation before a network lag.

The combination of DeMoney, Jain and Goldberg does not explicitly teach a specific formula for accelerating the multimedia stream.

However, Goldhor teaches the method wherein said animation is accelerated based on a factor determined by dividing the time required to play all of the currently queued animation by the minimum deadline of each of the messages in the queue (Goldhor, col. 6, line 58 – col. 7, line 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of DeMoney, Jain and Goldberg in view of Goldhor in order to enable the use of a specific formula for accelerating the multimedia stream. One would be motivated to do so in order to enable the playback rate to be increased in an effort to provide substantially continuous playback of media received from a file server or streaming media server, broadcasting data via the Internet.

12. Claims 6-8 do not teach or define any new limitations above claim 5 and therefore are rejected for similar reasons.

Response to Arguments

13. Applicant's arguments filed 5 November 2007 have been fully considered, but they are not persuasive for the reasons set forth below.

14. ***Applicant Argues:*** Jain discloses the use of a timestamp to compute a playout time for each packet, which is then released to the playout device at the appropriate playout time. This is quite different from the present invention which sets a deadline, by which the message must be played. Jain simply schedules the packet for play at its appropriate time. A deadline is irrelevant in Jain, as the packet is scheduled and then released at its appropriate time, whereas in the present invention, the deadline (i.e. the latest time in which the message can be played) is the time under consideration.

In Response: The examiner respectfully submits that in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the deadline, defined as the latest time in which the message can be played) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, the examiner respectfully submits that USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass*

Art Unit: 2155

Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 551 (CCPA 1969). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.”). See MPEP 2106 (II)C. Thus, in this case the deadline can be reasonably interpreted as meaning the send timestamp ts_i , which comes in on the packet and thus is determined by the packet, or message. This renders the rejection proper, and thus the rejection stands.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Baturay whose telephone number is (571) 272-3981. The examiner can normally be reached at 7:30am - 5pm, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2155

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alicia Baturay
January 9, 2008


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER